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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/899,349	07/05/2001	Michael Kamm	0267.1633	5163
33805	7590	12/14/2006	EXAMINER	
WEGMAN, HESSLER & VANDERBURG 6055 ROCKSIDE WOODS BOULEVARD SUITE 200 CLEVELAND, OH 44131			CHARLES, MARCUS	
			ART UNIT	PAPER NUMBER
			3682	

DATE MAILED: 12/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/899,349

**Applicant(s)**

KAMM, MICHAEL

**Examiner**

Marcus Charles

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

This action is responsive to the amendment filed 06-07-2006, which has been entered.

Claims 12-16 are currently pending.

1. The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following:

2. The reissue oath/declaration filed with this application is defective because the error, which is relied upon to support, the reissue application is not an error upon which a reissue can be based. See 37 CFR 1.175(a)(1) and MPEP § 1414. Applicant must specify the error upon which the reissue is based. It is not enough to indicate the reissue is based on in light of Jones et al. Applicant has not disclose the nature of the error or properly identify the error under 35 U.S.C 251 upon which the error is base. Applicant fails to disclose as to why the elements of the claim (s) that are delete causes the patent to be deemed wholly or partially inoperative or invalid by reason of the defect. Applicant also fails to disclose the importance of the added limitations of the claims and as to why it causes the patent to be operative. Thus, an error under 35 U.S.C. 251 has not been presented where the correction to the patent is one of spelling, or grammar, or a typographical, editorial or clerical error which does not cause the patent to be deemed wholly or partly inoperative or invalid for the reasons specified in 35 U.S.C. 251. Furthermore, the claim limitations that broaden the scope should be identified and explained in bracket.

In addition, the amendment to the claims is not proper. The amendment to the claims is not in accordance with 37 C.F.R 1.173 (b) (2) in that all subject matter being

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added to an original patent claim must be underlined and all subject matter being deleted from the original patent must be placed between brackets.

3. Claims 12-16 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marcus Charles whose telephone number is (571) 272-7101. The examiner can normally be reached on Monday-Thursday 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ridley Richard can be reached on (571) 272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Marcus Charles  
Primary Examiner  
Art Unit 3682  
December 10, 2006